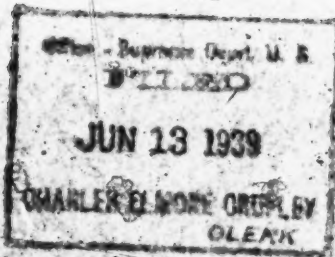


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**Nos. 110, 111, 112**



**In the Supreme Court of the United States**

**OCTOBER TERM, 1939**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

**MARY Q. HALLOCK AND CENTRAL UNITED NATIONAL  
BANK OF CLEVELAND, TRUSTEES**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

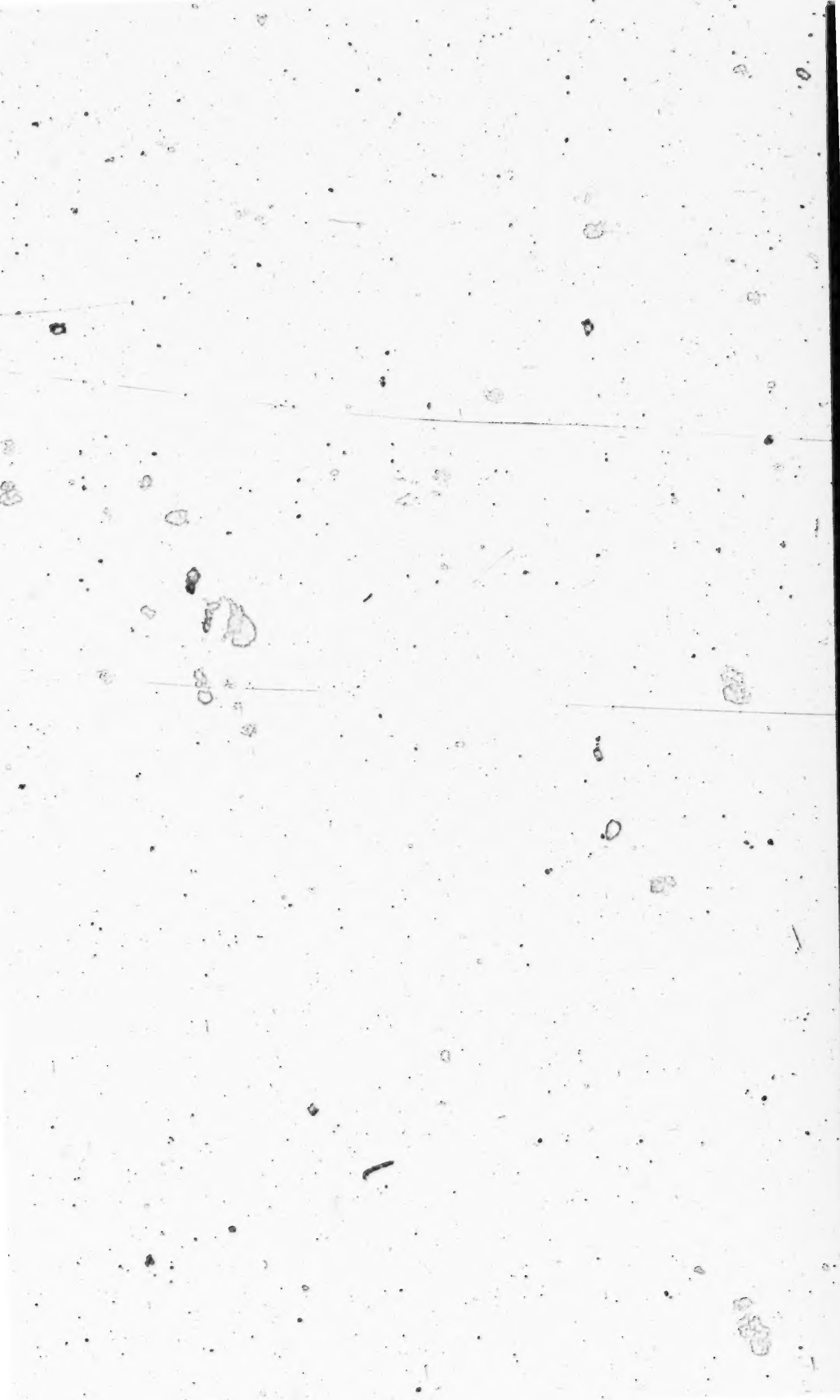
**MARY Q. HALLOCK, EXECUTRIX, ESTATE OF HENRY  
HALLOCK, DECEASED**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

**S. H. SQUIRE, SUPERINTENDENT OF BANKS OF THE  
STATE OF OHIO IN CHARGE OF LIQUIDATION OF THE  
UNION TRUST COMPANY, SUCCESSOR OF THE FIRST  
TRUST AND SAVINGS COMPANY, TRUSTEE, CLEVELAND,  
OHIO**

**PETITION FOR WRITS OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH  
CIRCUIT**



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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1939**

**No. 110**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

**MARY Q. HALLOCK AND CENTRAL UNITED NATIONAL  
BANK OF CLEVELAND, TRUSTEES**

**No. 111**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

**MARY Q. HALLOCK, EXECUTRIX, ESTATE OF HENRY  
HALLOCK, DECEASED**

**No. 112**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

**S. H. SQUIRE, SUPERINTENDENT OF BANKS OF THE  
STATE OF OHIO IN CHARGE OF LIQUIDATION OF THE  
UNION TRUST COMPANY, SUCCESSOR OF THE FIRST  
TRUST AND SAVINGS COMPANY, TRUSTEE, CLEVELAND, OHIO**

**PETITION FOR WRITS OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH  
CIRCUIT**

**The Solicitor General, on behalf of Guy T. Hel-  
vering, Commissioner of Internal Revenue, prays**

**(1)**

that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Sixth Circuit, entered in the above-entitled causes on March 13, 1939, affirming decisions of the United States Board of Tax Appeals.

#### OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 54-61) is reported in 34 B. T. A. 575. The opinion of the Circuit Court of Appeals is reported in 102 F. (2d) 1.

#### JURISDICTION

The judgments of the Circuit Court of Appeals were entered on March 13, 1939 (R. 101). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTION PRESENTED

The decedent created an *inter vivos* trust which provided for the payment of the income therefrom to the extent of \$6,000 a year to his then wife, Anne Lamson Hallock, from whom he was shortly thereafter divorced. Upon the death of Anne Lamson Hallock, or earlier termination of the trust, the principal of the trust was to be delivered to the decedent if he should then be living, or in the event he should not then be living, to the decedent's son and daughter, with further provision in the event either son or daughter should not then be living.



The question is whether the value of the remainder interest in the trust should be included in the decedent's gross estate under Section 302 (c) of the Revenue Act of 1926, as a transfer intended to take effect in possession or enjoyment at or after the grantor's death.

#### STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations involved are set forth in the Appendix, *infra*, pp. 16-21.

#### STATEMENT

The facts as stipulated (R. 42-54) and as found by the Board of Tax Appeals (R. 54-58) are in substance as follows:

Henry Hallock died October 10, 1932, testate. His widow, Mary Q. Hallock, was duly appointed executrix of his estate. (R. 56.)

On September 3, 1919, Henry Hallock entered into a separation agreement with his then wife, Anne Lamson Hallock, which provided for the payment to her of \$500 a month as alimony and for the creation of a trust to produce this sum. On the same day Henry Hallock created a trust of 884 shares of 7% preferred stock of the Ohio Rubber Company, the First Trust & Savings Company of Cleveland, Ohio, being made trustee. The dividends of such stock amounted to \$6,188 per annum, which would be sufficient to meet the payment of \$6,000 per year to the wife and leave \$188 per year

for the expenses and compensation of the trustee. (R. 56.) Any sums of income in excess of \$6,000 a year, plus certain expenses, were to be paid to the decedent, his heirs, executors, administrators or assigns. (R. 44.) The decedent reserved for himself, his heirs, executors, administrators and assigns the right to substitute in place and lieu of any securities which are or might be at any time part of the trust fund new and different securities which in the opinion of the trustee were of equal value to the securities sought to be changed. (R. 46.)

The Union Trust Company was the successor in trust of the First Trust & Savings Company, and it is now in liquidation by S. H. Squire, Superintendent of Banks of the State of Ohio. (R. 56.)

The trust agreement contained the following provision with reference to the disposition of the trust estate (R. 46-47):

C. If and when Anne Lamson Hallock shall die, then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively, son and daughter of



the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living.

D. Party of the First Part reserves to himself, his heirs, executors, administrators and assigns the right at his option if and in the event said Anne Lamson Hallock shall marry any other person than said Henry Hallock to pay to said Trustee on or within six months after said marriage the sum of Twenty Thousand Dollars (\$20,000.00) and deliver over to said Trustee evidence that said Anne Lamson Hallock has so re-married. Upon receipt of said fund and said proof by Trustee, if and in the event said proof is satisfactory to Trustee, then and in such event Trustee shall deliver the said fund of Twenty Thousand Dollars (\$20,000.00) to said Anne Lamson Hallock. This trust shall terminate and the disposition of the then accrued income and trust fund shall be made pursuant to Paragraph C above.

This trust may be terminated, modified, altered, canceled or in any way varied by the written consent of the Party of the First Part and beneficiary.

Anne Lamson Hallock secured her divorce in 1919. The trust was in effect at the time of the

decedent's death and Anne Lamson Hallock was still living and had not remarried. (R. 56.)

The executrix of the estate filed an estate tax return showing no tax due. (R. 56.) In the audit of the return the Commissioner contended that the value of the 884 shares of 7% preferred stock of the Ohio Rubber Company, constituting the corpus of the trust, should be included in the gross estate, and increased the gross estate by \$70,720. (R. 56.) On the basis of the valuation of \$70,720 for the shares and the age of Anne Lamson Hallock at the time of decedent's death, the fair value of the life estate or interest of Anne Lamson Hallock in the trust estate at the date of the decedent's death was \$25,743. (R. 53.)<sup>1</sup>

Before the Board the executrix and transferees contended that no part of the value of the corpus of the trust should be included in the gross estate, or, in the alternative, that the value of Anne Lamson Hallock's life interest as of the date of decedent's death should be excluded. (R. 57.) The Board

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<sup>1</sup> The Commissioner also made other adjustments, as to which no question is being raised in the present petition for writs of certiorari, and asserted a deficiency of \$6,096.97 against the estate of Henry Hallock. A deficiency in like amount was also asserted against Mary Q. Hallock and Central United National Bank of Cleveland, Trustees, as transferees, and another deficiency against S. H. Squire, Superintendent of Banks of the State of Ohio, in charge of liquidation of the Union Trust Company, Successor of the First Trust and Savings Company, Trustee, as transferee. (R. 55.)

held that no part of the value of the trust was to be included, and determined that there was no deficiency. (R. 58-61.)

Upon appeal the Government contended that the value of the corpus less the value of Anne Lamson Hallock's life estate should be included in the gross estate under Section 302 (c). The court below held that the case was controlled by the decisions of this Court in *Helvering v. St. Louis Union Trust Co.*, 296 U. S. 39, and *Becker v. St. Louis Union Trust Co.*, 296 U. S. 48, and that no part of the value of the corpus should be included.

#### **SPECIFICATION OF ERRORS TO BE URGED**

The Circuit Court of Appeals erred:

1. In holding that the value of the remainder interest in the trust should not be included in the gross estate under Section 302 (c) of the Revenue Act of 1926.
2. In determining that there is no deficiency in estate tax.

#### **REASONS FOR GRANTING THE WRIT**

1. These cases present an important question of federal estate taxation, the decision of which by the court below is, we submit, in conflict with the decision of this Court in *Klein v. United States*, 283 U. S. 231. The problem arises where the decedent has conveyed a life estate and has provided with respect to the remainder that it shall go to him if he survives the life tenant and to named bene-

ficiaries (the life tenant or others) if he does not. The question relates to the taxability of the remainder where the grantor predeceases the life tenant. It is the Government's position that, so far as the remainder is concerned, the conveyance to the beneficiaries is a substitute for testamentary disposition, that it is a transfer intended to, and one which does, take effect in possession or enjoyment at or after the grantor's death, and that hence the remainder is to be included within the grantor's gross estate by virtue of the express terms of the taxing Act.

This conclusion is supported by the unanimous decision of this Court in *Klein v. United States*, 283 U. S. 231. In that case the grantor conveyed to his wife by deed a life estate in certain lands, but provided that in the event she survived the grantor she was to take the lands in fee simple. The husband died before the wife. The Commissioner ruled that the transfer of the remainder was one intended to take effect in possession or enjoyment at or after the grantor's death. This Court sustained the Commissioner's determination, saying (283 U. S. at 233-234):

The remainder was retained by the grantor; and whether that ever would become vested in the grantee depended upon the condition precedent that the death of the grantor happen *before* that of the grantee. The grant of the remainder, therefore, was contingent. \* \* \* It is perfectly plain that

the death of the grantor was the indispensable and intended event which brought the larger estate into being for the grantee and effected its transmission from the dead to ~~the~~ the living, thus satisfying the terms of the taxing act and justifying the tax imposed. \* \* \*

In the cases at bar the settlor created a trust for the payment of alimony, the payments to serve as satisfaction of any claim of the grantor's wife for support, dower or inheritance (R. 48). Upon the death of the grantor's wife the trust was to terminate and the principal of the trust fund was to be delivered to the grantor (R. 46, par. C). The instrument contained a further provision in the event that the grantor should not be living at the death of his wife. In that event the principal was to go to the children or grandchildren of the grantor, the provision reading as follows (*ibid.*):

If and in the event said Party of the First Part [settlor] shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living.



It is apparent that here, as in the *Klein* case, the grantor retained an interest in the property which would vest in enjoyment and possession in the named beneficiaries only by virtue of the death of the grantor. Here the trust served to discharge the grantor's duty of support during the lifetime of his wife or so long as she did not remarry (R. 46-47). Thus even in respect of the life estate the property remained in a substantial sense the grantor's, being applied to the performance of an obligation owed by him. Compare *Douglas v. Willcuts*, 296 U. S. 1; *Commissioner v. Hyde*, 82 F. (2d) 174 (C. C. A. 2d). When the transfer had served its purpose in respect of the grantor's duty of support, the corpus was to be returned to him. It was only in the event that he should not then be living, and consequently have no further opportunity to make disposition of the remainder as part of his estate, that the remainder was to be conveyed to his children or grandchildren. It is the value of this remainder interest which the Commissioner seeks to tax on the ground that, as was held in the *Klein* case, its transmission from the decedent to the remaindermen was incomplete until decedent's death.

2. The court below was of opinion that the present cases were ruled by *Helvering v. St. Louis Union Trust Co.*, 296 U. S. 39, and *Becker v. St. Louis Union Trust Co.*, 296 U. S. 48. Those cases, decided by a bare majority of the Court, did not overrule the *Klein* case, but sought to distinguish



it. In the first of these two cases the decedent transferred securities in trust, the income to be paid to his daughter during her life, with remainder over to named beneficiaries. The indenture contained a further provision that if the daughter should predecease the grantor the estate was to be paid over to the grantor. This Court, construing the trust instrument, concluded that the grantor retained nothing save a "mere possibility of a reverter", and had no power to resume ownership, possession, or enjoyment "except upon a contingency in the nature of a condition subsequent" (296 U. S. at 43). The *Klein* case was distinguished on the ground that there the remainder became vested in the grantee only "upon the condition precedent that the grantor die during the life of the grantee" (*idem*, p. 45). In the *Becker* case, the trust instrument provided that the grantor's child should receive a stated income, and that if the child should die before the grantor the estate should "thereupon revert" to the grantor, or if the grantor should die before the child, then the property should become the child's immediately and absolutely. This Court, emphasizing the provision that the trust estate should "revert" in case of the predecease of the beneficiary, stated that the question was whether the "mere possibility of a reverter" brings the transfer within the reach of the statute (296 U. S. at 50-51). In this view, it was held that the case was ruled by the decision in

*Helvering v. St. Louis Union Trust Co.*, decided the same day.

If the distinction suggested in the *St. Louis Union Trust Co.* cases—between a vested remainder subject to defeasance by a condition subsequent, and a contingent remainder subject to a condition precedent—be followed, it would appear that the remainder in the present cases is within the latter category and hence within the statute. The remainder limited to the children and grandchildren of the grantor was subject to a condition precedent in addition to the termination of the preceding estate, that is, it was subject to the condition precedent that the settlor die during the continuance of the trust. Consequently, as a matter of classification of estates, the remainder was not vested but contingent. See *Stevens v. Van Brocklin*, 295 Ill. 434; *Robinson for an Opinion*, 45 R. I. 137; Restatement of the Law—Property—Future Interests (Parts 1 and 2), pp. 542, 561–564; Restatement of the Law—Trusts, p. 562. Since the remainder would never vest except upon the condition that the settlor die prior to the termination of the trust, and the settlor having so died, his death clearly effected a transmission of the remainder interest. See *Helvering v. St. Louis Union Trust Co.*, *supra*, p. 45.

It is submitted, therefore, that the court below misapplied the decisions in the *St. Louis Union Trust Co.* cases.

3. While it is believed that the question of the application of the *Klein* and *St. Louis Union Trust Co.* decisions to the cases at bar merits review by this Court, it is believed that the distinction between those decisions will be found, upon further examination, to be unsatisfactory. The distinction, turning upon the technical forms of conveyance, loses sight of the controlling question under the taxing statute, which is whether the transfer is intended to take effect "in possession or enjoyment" at or after the grantor's death. The statute, speaking in terms of possession or enjoyment, carefully avoids the formal niceties involved in definitions of title. This was recognized by the Court in the *Klein* case, *supra*, at 234, where it was said:

Nothing is to be gained by multiplying words in respect of the various niceties of the art of conveyancing or the law of contingent and vested remainders.

In an effort to conform to the decisions in the *St. Louis Union Trust Company* cases the Treasury Department amended its regulations (Article 17, Regulations 80, 1937 edition, *infra*, p. 20); under the amended regulation it is necessary to determine whether the death of the decedent constitutes a condition precedent to the passing of property or merely an event extinguishing a possibility of reverter. Under this test the line of demarcation will at times have to be drawn so nicely that the distinction made will seem the merest

quibble. It is submitted that under the statute there is no necessity, and indeed no legitimate occasion, for such distinctions. It is submitted that the decision in the *Klein* case should have controlled the decisions in the *St. Louis Union Trust Company* cases, since in substance the transfers were the same; and that the latter decisions should be overruled.

4. The problem is one which cannot readily be dealt with by amendatory legislation. It would be unsatisfactory to attempt to describe in the statute the numerous limitations of estates by which transfers are made to take effect in possession or enjoyment at or after the death of the grantor. Moreover, the language employed in the statute was taken over by the federal estate tax from the inheritance tax laws of at least 40 states.<sup>2</sup> In *Burnet v. Northern Trust Co.*, 283 U. S. 782; *Morsman v. Burnet*, 283 U. S. 783; and *McCormick v. Burnet*, 283 U. S. 784, it was held that a transfer with the retention of a life estate in the grantor was not embraced within the statutory language as a transfer intended to take effect in possession or enjoyment at or after the grantor's death. In conjunction with those decisions, the decisions in the *St. Louis Union Trust Company* cases deprive the statutory language of virtually any substance. Particularly

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<sup>2</sup> The citations to the state statutes may be found in the Government's brief in *Hassett v. Welch*, No. 375, 1937 Term, pp. 20-22.

in view of the present state of the decisions on the question presented in the cases at bar, it would seem appropriate that there be an opportunity to reconsider those decisions before concluding finally that Congress must abandon the statutory language.

**CONCLUSION**

For the foregoing reasons it is respectfully submitted that this petition for writs of certiorari should be granted.

**ROBERT H. JACKSON,**  
*Solicitor General.*

**JUNE, 1939.**

## APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. [As amended by Section 803 of the Revenue Act of 1932, c. 209, 47 Stat. 169.] The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

\* \* \* \* \*

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have



been made in contemplation of death within the meaning of this title.

(h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

(U. S. C., Title 26, Sec. 411.

SEC. 315. [As amended by Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791, and Sections 803 and 809 of the Revenue Act of 1932.] (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he

has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(U. S. C., Title 26, Sec. 427.)

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collec-

tion, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(U. S. C., Title 26, Sec. 500.)

Prior to its amendment by Section 803 of the Revenue Act of 1932, the first sentence of Section 302 (c) of the Revenue Act of 1926 had been amended by the Joint Resolution of March 3, 1931, c. 454, 46 Stat. 1516, to read as follows:

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, *including a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom; except in*

\* The portion added by the amendment of March 3, 1931, is italicized.

case of a bona fide sale for an adequate and full consideration in money or money's worth.

Treasury Regulations 80 promulgated under the Revenue Act of 1934:

**ART. 18. Transfers with possession or enjoyment retained.—(a) Transfers included.—**

The statutory phrase, "a transfer \* \* \* intended to take effect in possession or enjoyment at or after his death," includes a transfer, whether in trust or otherwise, made subject to the reservation by the decedent of the use, or the possession, or the rents or other income of the transferred property, or any part thereof, for his life, or for a period ascertainable only by reference to his death, or for a period of such duration as to evidence his intention to retain the enjoyment (in whole or in part) of the transferred property throughout his life. (See article 15.)

**(b) Taxability.—**Every such transfer (not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), made by the decedent subsequent to September 8, 1916, is taxable, and the value of the property or interest so transferred shall be included in the gross estate of the decedent. The provisions of this subdivision do not apply (1) if the transfer was made prior to 10.30 p. m., eastern standard time, March 3, 1931, and (2) if the decedent died prior to 5 p. m., eastern standard time, June 6, 1932. See section 506 of the Revenue Act of 1934.

Treasury Regulations 80 (1937 Ed.):

**ART. 17. Transfers conditioned upon survivorship.—**The statutory phrase, "a trans-

fer \* \* \* intended to take effect in possession or enjoyment at or after his death," includes a transfer by the decedent (other than a bona fide sale for an adequate and full consideration in money or money's worth) whereby and to the extent that the beneficial title to the property (if the transfer was in trust), or the legal title thereto (if the transfer was otherwise than in trust), remained in the decedent at the time of his death and the passing thereof was subject to the condition precedent of his death. If the tax applies, it does so without regard to the time of the transfer, whether before or after the enactment of the Revenue Act of 1916.

On the other hand, if, as a result of the transfer, there remained in the decedent at the time of his death no title or interest in the transferred property, then no part of the property is to be included in the gross estate merely by reason of a provision in the instrument of transfer to the effect that the property was to revert to the decedent upon the predecease of some other person or persons or the happening of some other event. (See article 15.)